D.B. CIVIL SPECIAL APPEAL (W) NO.750/2004.
(State of Rajasthan & Ors. Vs. Kalu Ram & Anr.)

Date :07.04.2005

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.R.P.S. Choudhary, Additional Advocate General.
Mr.D.R.Gurjar, for the respondents.

We have heard learned counsel for the parties and perused the order of the learned Single Judge dated 28.09.2004, dismissing the writ petition in limine.

Briefly stated the fats of the case are that the respondent Kalu Ram engaged as Jaldhari w.e.f. 01.07.1986 by the third appellant Vikas Adhikari, Panchayat Samiti, Jayal for providing drinking water to the students in the school runs by the Panchayat Samiti. He was removed from service by retrenchment order dated 11.01.1994. The industrial dispute was raised. By an ex parte award dated 29.04.2003 the respondent was directed to be reinstated with 30% back wages. An application was filed under Section 22-A for setting aside the ex parte award. The said application was rejected by an order dated 08.09.2003. The learned Single Judge refused to interfere with the order of the labour court.

Pursuant to the directions of this Court dated 17.02.2005

Shri O.P. Saini Director, Rural Development and Panchayatiraj Department, Government of Rajasthan, Jaipur has filed an affidavit. It is averred that before the labour court Miss Kusum Rao advocate was engaged for conducting the case on behalf of the appellants. The Vikas Adhikari executed the vakalat nama in favour of the advocate on 05.07.2002. The Vikas Adhikari got the reply prepared, Miss Kusum Rao submitted a bill of Rs.550/- for drafting of reply and Rs.700/- towards typing charge in total Rs.1250/- which was paid to her. A copy of the bill showing the receipt of the fees and expenses has been submitted with the affidavit and marked as Annexure-A/1. It is further averred that during the years 2002-2003 there was heavy drought through out Rajasthan and with a view to speed up famine relief work in brought districts, the Vikas Adhikari in all the districts were directed to take up the relief work on top urgency basis. The learned counsel assured the said Vikas Adhikari that she will inform as and when he is required to be present in court. No information was received from the learned counsel, as such, the Vikas Adhikari could not appear before the labour court. Subsequently after ex parte award was made, an inquiry was made by the Vikas Adhikari about the case. He came to know that the advocate engaged by the Panchayat Samiti neither filed the reply nor appeared before the labour court.

Considering all the facts and circumstances of the case, we are of the view that there exists sufficient reason, which prevented the

Vikas Adhikari for not appearing before the labour court. The ends of justice would meet if the ex parte award is set aside to here the matter on merit on payment of cost.

Consequently, the special appeal is allowed. The order of the learned Single Judge dated 28.09.2004 is set aside. The writ petition is allowed. The order of the Labour Court, Jodhpur dated 08.09.2003 as well as the award dated 29.04.2003 are set aside. The reference is restored to its original number on payment of cost of Rs.5,000/- payable to the first respondent Kalu Ram. The parties shall appear before the labour court on 23rd May, 2005. The cost shall be paid to the first respondent on his appearance on the said date.

(MANAK MOHTA),J. **(N.N.MATHUR),J**

ashwini/-